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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,426	09/05/2003	Joao Francisco De Mendonca Fava	2694	8540
7590	07/02/2004			
STRIKER, STRIKER & STENBY 103 East Neck Road Huntington, NY 11743			EXAMINER TORRES, ALICIA M	
			ART UNIT 3671	PAPER NUMBER
DATE MAILED: 07/02/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/656,426

Applicant(s)

DE MENDONCA FAVA ET AL. 

Examiner

Alicia M Torres

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5-7,11 and 12 is/are rejected.
- 7) ☒ Claim(s) 2-4 and 8-10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Scudder.

3. In regards to claim 1, Scudder discloses a process of relative positioning between an agricultural machine and crops (127) on their planting rows (35), comprising the steps of arranging sensing means (see column 6, lines 25-33) forwardly of a center of a rotor (32, 34) of an agricultural machine and at a distance which is at least equal to or greater than a top radius of trees (127) to be worked with the radius being measured in a planting row direction (see column 6, lines 25-33);

sensing the tree top by the sensing means to determine a rearward point, a forward point, a center point and a farthest transverse point from the center point of a tree top (see column 6, lines 31-33); and

adjusting the rotor (32, 34) to define a trajectory of the rotor center (402) with respect to said points; and

repeating said steps for each of the trees (127) in the planting row (35) to be worked.

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4. In regards to claim 7, Scudder discloses a device for relative positioning between an agricultural machine and crops (127) on their planting rows (35), comprising sensing means (see column 6, lines 25-33) arranged forwardly of a sensor of a rotor (32, 35) of an agricultural machine and at a distance which is at least equal to or greater than a top radius of trees (127) to be worked with the radius being measured in a planting row (35) direction and sensing the tree top by the sensing means to determine a rearward point, a forward point, a center point and a farthest transverse point from the center point of a tree top (see column 6, lines 25-33); and

Means (not shown, hydraulic actuators) for adjusting the rotor (32, 34) to define a trajectory of the rotor center (402) with respect to said points, whereupon said steps are repeated for each of the trees (127) in the planting row (35) to be worked.

*Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5, 6, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scudder in view of Beard.

The device is disclosed as applied to claims 1 and 7 above. However, Scudder fails to disclose the process further comprising means for placing the rotor center at a distance from the

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farthest transverse point of the tree top, maintaining the distance along an entire trajectory during following of the tree top, and maintaining a predetermined distance between the tree tops at a predetermined value in relation to the planting row, as per claims 5 and 11; and

further comprising displacing the rotor between two consecutive tree tops at a parallel trajectory and at a predetermined distance from the planting row;

contouring the tree top over a trajectory starting at a rearward point and ending at a forward point at a distance from the tree top; and

selecting the distances such that rod ends of the rotor are on another side of the planting row during displacement in a space between two consecutive trees so as to fully reach regions around the rearward point and the forward point of the tree top, as per claims 6 and 12.

Beard discloses a similar device further comprising means (48) for placing the rotor center (70) at a distance from the farthest transverse point of the tree top (T), maintaining the distance along an entire trajectory during following of the tree top (T), and maintaining a predetermined distance between the tree tops (T) at a predetermined value in relation to the planting row, as per claims 5 and 11; and

further comprising displacing the rotor (70) between two consecutive tree tops (T) at a parallel trajectory and at a predetermined distance from the planting row;

contouring the tree top (T) over a trajectory starting at a rearward point and ending at a forward point at a distance from the tree top (T, see figure 4); and

selecting the distances such that rod ends (76) of the rotor (70) are on another side of the planting row during displacement in a space between two consecutive trees (T) so as to fully

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reach regions around the rearward point and the forward point of the tree top (T), as per claims 6 and 12.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the trajectory of Beard on the device of Scudder in order to pass around the tree.

### *Allowable Subject Matter*

7. Claims 2-4 and 8-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### *Conclusion*

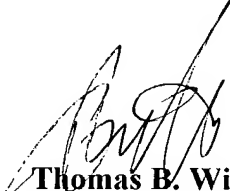
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Block, Pellenc et al., and Scott et al. have been cited as of interest.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia M. Torres whose telephone number is 703-305-6953. The examiner can normally be reached Monday through Thursday from 7:00 a.m. – 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at 703-308-3870.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is 703-305-1113. The fax number for this Group is 703-872-9306.



**Thomas B. Will**  
**Supervisory Patent Examiner**  
**Group Art Unit 3671**

AMT  
June 25, 2004